

flash cut;²⁵¹ (6) Requests for STA to use analog translators to offset loss of analog service;²⁵² (7) Requests for extension of time to construct (using FCC Form 337), or to toll the construction deadline for, DTV facilities;²⁵³ (8) Requests to transition early to their post-transition channel;²⁵⁴ (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel;²⁵⁵ (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline;²⁵⁶ (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV);²⁵⁷ and (12) PSIP requirement to populate the Event Information Tables ("EITs") with accurate information about each event and to update the EIT if more accurate information becomes available.²⁵⁸ The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

128. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before **60 days from date of publication of this Notice in the Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²⁵⁹ we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

129. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202-395-5167.

²⁵¹ See *supra* section V.B. and 47 C.F.R. §§ 73.1690 and 73.1750. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁵² See *supra* section V.A. See note 86.

²⁵³ See *supra* section V.C.4. See also OMB Control Nos. 3060-1001 (Form 337) and 3060-0407 (47 C.F.R. § 73.3598).

²⁵⁴ See *supra* section V.C.5. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁵⁵ See *supra* section V.C.6. See also OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

²⁵⁶ See *supra* section V.C.6. See also OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

²⁵⁷ See *supra* section V.D. See also OMB Control 3060-0029 and 3060-0837 (Form 302DTV).

²⁵⁸ See *supra* section V.G.2.

²⁵⁹ The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

130. Further Information. For additional information concerning the PRA proposed information collection requirements contained in this Notice, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

C. Ex Parte Rules

131. Permit-But-Disclose. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.²⁶⁰ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²⁶¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

132. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,²⁶² interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.²⁶³

133. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

134. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110,

²⁶⁰ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

²⁶¹ See *id.* § 1.1206(b)(2).

²⁶² See *id.* §§ 1.415, 1.419.

²⁶³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

135. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

136. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

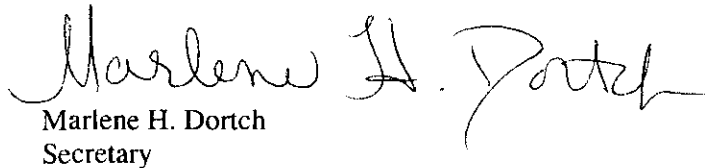
137. Additional Information. For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120; Gordon Godfrey, Gordon.Godfrey@fcc.gov, of the Media Bureau, Engineering Division, (202) 418-7000; Nazifa Sawez, Nazifa.Sawez@fcc.gov, of the Media Bureau, Video Division, (202) 418-1600; or Alan Stillwell, Alan.Stillwell@fcc.gov, of the Office of Engineering and Technology, (202) 418-2470.

VII. ORDERING CLAUSES

138. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 that NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*, including the proposed amendments to Part 73 of the Commission's rules, as set forth in Appendix A.

139. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

PROPOSED RULE CHANGES

1. Add a new § 73.616 to read as follows:

Section 73.616 Post-transition DTV station interference protection.

(a) A petition to add a new channel to the post-transition DTV Table of Allotments contained in section 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of section 73.623(d)(2) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of section 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (d) of this section; the land mobile protection requirements of section 73.623(e); and the FM radio protection requirement of 73.623(f).

(1) The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(b) An application for a new post-transition DTV broadcast station or for changes in an authorized post-transition DTV station will not be accepted for filing unless it protects all land mobile operation on channels 14-20 in accordance with section 73.623(e) and all other post-transition DTV stations from interference in excess of the limits established in this section. An application must not cause interference to more than: the greater of either 0.5 percent the population served by the other station or the amount of interference already predicted to be caused by the applicant's authorized facilities.

(1) The protected facilities of a post-transition DTV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(2) For evaluating compliance with this requirement, interference to populations served is to be predicted based on the 2000 census population data and otherwise according to the procedure set forth in OET Bulletin No. 69, including population served within service areas determined in accordance with section 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. These documents are also available through the Internet on the FCC Home Page at <http://www.fcc.gov>. The threshold levels at which interference is considered to occur are:

(i) For co-channel stations, the D/U ratio is +15 dB. This value is only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, this value is +23 dB. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values are computed from the following formula:

$$D/U = 15 + 10 \log_{10} [1.0 / (1.0 - 10^{-S/10})]$$

Where $x = S/N - 15.19$ (minimum signal to noise ratio)

(ii) For interference from a lower first-adjacent channel, the D/U ratio is -28 dB.

(iii) For interference from an upper first-adjacent channel, the D/U ratio is -26 dB.

(c) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see section 73.603(a)).

(d) A petition to add a new channel to the post-transition DTV Table or a post-transition DTV station application that proposes to expand its allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to Subpart J of this part, within the protected contour defined in section 73.6010 of this part.

(1) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of Sec. 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-analog TV" specified in section 73.623(c)(2).

(2) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of section 73.699 of this part) fails to meet the D/U signal ratios specified in paragraph (b)(2) of this section.

(3) In support of a request for waiver of the interference protection requirements of this section, an applicant for a post-transition DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

NOTE: When this rule was adopted, the filing freeze announced in an August 2004 Public Notice (19 FCC Rcd 14810 (MB 2004)) remained in effect. For a short period of time after the filing freeze is lifted, until a date to be announced by a Media Bureau Public Notice, applicants must protect Appendix B facilities in addition to any authorized facilities required to be protected pursuant to this rule section.

2. Amend § 73.623 by adding a note before paragraph (a) to read as follows:

Section 73.623 DTV applications and changes to DTV allotments

NOTE: Petitions for rule making and applications seeking facilities that will operate after the end of the DTV transition must also comply with section 73.616.

(a) * * *

3. Amend § 73.624 by adding paragraph (d)(1)(v) and revising paragraph (d)(3) to read as follows:

Section 73.624 Digital television broadcast stations

* * * * *

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (section 73.682(d)), shall be constructed in the following markets by the following dates:

- (1)(i) May 1, 1999: all network-affiliated television stations in the top ten television markets;
- (ii) November 1, 1999: all network-affiliated television stations not included in category (1)(i) and in the top 30 television markets;
- (iii) May 1, 2002: all remaining commercial television stations;
- (iv) May 1, 2003: all noncommercial television stations.

(v) February 17, 2009 is the deadline for the completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel. For purposes of this construction deadline, the post-transition facilities to be constructed are those defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87-268 and codified at 47 C.F.R. § 73.622(i).

* * * * *

(3) Authority delegated.

(i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) Such circumstances ~~shall~~ may include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; **or**

~~(B) The lack of equipment necessary to obtain a digital television signal; or~~ **(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.**

~~(C) Where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.~~

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(iv) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

* * * * *

4. Amend § 73.682(d) to read as follows:

Section 73.682 TV transmission standards

* * * * *

(d) Digital broadcast television transmission standard. Effective **[120 days after publication in the Federal Register]** ~~February 1, 2005~~, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: "ATSC Standard Digital Audio Compression (AC-3)" (incorporated by reference, see § 73.8000), ATSC Doc. A/53~~B~~, Revision ~~E B~~ with Amendment 1 and Amendment 2: "ATSC Digital Television Standard," (**September 13, 2006**) except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table A3" in Section 5.1.1. Table ~~A2~~ and Section 5.1.3 ~~2~~ Table A4 (incorporated by reference, see § 73.8000), and ATSC A/65C ~~B~~: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," (Revision ~~C B~~ with Amendment 1) **May 9, 2006** ~~2003~~ (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, **Recommended Practice**, Guide to Use of the ATSC Digital Television Standard, **including Corrigendum No. 1 (December 4, 2003, Corrigendum No. 1 December 20, 2006 October 4, 1995)**, and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

5. Amend § 73.8000(b)(2) and (3) to read as follows:

Section 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(1) * * *

(2) ATSC A/53~~B~~: "ATSC Digital Television Standard," dated August 7, 2001, Revision ~~E B~~, with Amendment 1 dated **April 18 May 23, 2006**~~2~~ and Amendment 2 dated **September 13 May 19, 2006**~~3~~, IBR approved for § 73.682, except for section 5.1.2 of Annex A, and the phrase "see Table A-3" in section 5.1.1. Table~~A2~~ and section 5.1.3 ~~2~~ Table A4.

(3) ATSC A/65C ~~B~~: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," (Revision ~~C B~~) **January 2 March 18, 2006** ~~3~~, with Amendment 1 dated **May 9, 2006**, and IBR approved for § 73.682, IBR approved for §§ 73.9000-73.9001.

* * * * *

APPENDIX B

PROPOSED CHANGES TO FCC FORMS

The Federal Communications Commission proposes to revise FCC Form 301 as set forth below:

1. Main Form Section I – General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows [bold used to show changes]:

“b. Service Type: ☐ AM ☐ FM ☐ TV ☐ **DTV Pre-Transition** ☐ **DTV Post-Transition** ☐ **DTV Both (Pre- and Post-Transition)**”

2. Instructions Section I.D. (General Information), Item 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item 4 is revised to add the following new paragraph [bold used to show changes]:

“DTV Service Type: The DTV Pre-Transition service type is for a station whose application relates solely to its pre-transition DTV operation on a channel that is not allotted for post-transition use by this station and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.”

3. Form Section III-D – DTV Engineering on page 17 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows [bold used to show changes]:

“Complete ~~Certification Checklist~~ Questions 1-5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1-13.

“Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)-(c), and 2-5. A correct answer of “Yes” to all of these questions below will ensure an expeditious grant of a construction permit application to modify pre-transition facilities. However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of “No” will require additional evaluation of the applicable information in this form before a construction permit can be granted.

“Post-Transition Expedited Processing. An application concerning a post-transition channel must complete questions 1(a), (d)-(e), and 2-5. A station applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”); (2) specifies facilities that match or closely approximate those defined in the new DTV Table

Appendix B facilities; and (3) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91.

4. Form Section III-D – DTV Engineering, Question 1 on page 17 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows [bold used to show changes]:

“(b) It will operate a **pre-transition facility** from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

“(c) It will operate a **pre-transition facility** with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

“(d) It will operate at **post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”).** ☐ Yes ☐ No ☐ Don’t Know”

“(e) It will operate at **post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.** ☐ Yes ☐ No ☐ Don’t Know

5. Instructions to Section III-D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (and both the current and new DTV Tables in 47 C.F.R. §§ 73.622(b) and (i)), (ii) questions 1(b) and 1(c) apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e) apply only to applications for post-transition facilities. Item 1 (of Instructions Section III.H.) is revised as follows [bold used to show changes]:

“Certifications Checklist. Items 1-5 set forth a series of certifications concerning the Commission’s technical allotment standards and operational requirements for DTV stations.

“Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 C.F.R. Section 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission’s Table of Television Allotments, 47 C.F.R. Sections 73.622(**ab**) **or (i)**, (b) it will operate a **pre-transition facility** with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), (c) it will operate with **pre-transition** facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f), (d) **it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i), and (e) it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.** .

“If any of items 1(a)-1(c) are answered “No” in an application of a pre-transition facility, the applicant must demonstrate in response to Section III-D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

“Interference is to be predicted for pre-transition facilities in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87-268. See 47 C.F.R. Section 73.623.

“If any of items 1(a), 1(d)-(e) are answered “No” in an application of a post-transition facility, the applicant will not qualify for expedited processing.

“Interference is to be predicted for post-transition facilities in accordance with the procedure set forth in the Third DTV Periodic Report and Order in MB Docket No. 07-91. See 47 C.F.R. Sections 73.616 and 73.623.

6. Form Section III-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 19 is revised as follows [bold used to show changes]:

“Does the proposed facility satisfy the pre-transition interference protection provisions of 47 C.F.R. Section 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered “No.”) and/or the post-transition interference protection provisions of 47 C.F.R. Section 73.616? ☐ Yes ☐ No ”

7. Form and Instructions Section III-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission proposes to revise FCC Form 340 as set forth below:

8. Main Form Section I – General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows [bold used to show changes]:

“b. Service Type: ☐ FM ☐ TV ☐ DTV Pre-Transition ☐ DTV Post-Transition ☐ DTV Both (Pre- and Post-Transition)”

9. Instructions for Section I. (General Information), Item (Question) 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item (Question) 4 is revised to add the following new paragraph [bold used to show changes]:

“DTV Service Type: The DTV Pre-Transition service type is for a station whose application relates solely to its pre-transition DTV operation and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.”

10. Form Section VII-D – DTV Engineering on page 15 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows [bold used to show changes]:

“Complete ~~Certification Checklist~~ Questions 1-5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1-13.

“**Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)-(c), and 2-5.** A correct answer of “Yes” to all of these questions ~~below~~ will ensure an expeditious grant of a construction permit **application to change pre-transition facilities.** However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of “No” will require additional evaluation of the applicable information in this form before a construction permit can be granted.

“**Post-Transition Expedited Processing. An application concerning a post-transition channel must complete questions 1(a), (d)-(e), and 2-5.** A station applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”); (2) specifies facilities that match or closely approximate those defined in the new DTV Table Appendix B facilities; and (3) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91.

11. Form Section VII-D – DTV Engineering, Question 1, on page 15 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows [bold used to show changes]:

“(b) It will operate a **pre-transition facility** from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

“(c) It will operate a **pre-transition facility** with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622. ☐ Yes ☐ No

“(d) It will operate at **post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”).** ☐ Yes ☐ No ☐ Don’t Know”

“(e) It will operate at **post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.** ☐ Yes ☐ No ☐ Don’t Know

12. Instructions to Section VII-D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (see 47 C.F.R. §§ 73.622(a) and (i)), (ii) questions 1(b) and 1(c)

apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e). Item 1 (of Instructions to Section VII) is revised as follows [bold used to show changes]:

“Certifications Checklist. Items 1-5 set forth a series of certifications concerning the Commission’s technical allotment standards and operational requirements for DTV stations.

“Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 C.F.R. Section 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission’s Table of Television Allotments, 47 C.F.R. Sections 73.622(ab) or (i), (b) **it will operate a pre-transition facility** with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), (c) it will operate with **pre-transition** facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f), (d) **it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i), and (e) it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.**

“If any of items 1(a)-1(c) are answered “No” **in an application of a pre-transition facility**, the applicant must demonstrate in response to Section III-D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

“Interference is to be predicted **for a pre-transition facility** in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87-268. See 47 C.F.R. Section 73.623.

“**If any of items 1(a), 1(d)-(e) are answered “No” in an application of a post-transition facility, the applicant will not qualify for expedited processing.**

“**Interference is to be predicted for a post-transition facility in accordance with the procedures set forth in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91. See 47 C.F.R. Sections 73.616 and 73.623.**

13. Form Section VII-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 17 is revised as follows [bold used to show changes]:

“Does the proposed facility satisfy the **pre-transition** interference protection provisions of 47 C.F.R. Section 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered “No.”) **and/or the post-transition interference protection provisions of 47 C.F.R. Section 73.616?** ☐ Yes ☐ No ”

14. Form and Instructions Section VII-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission proposes to revise FCC Form 337 as set forth below:

15. Main Form is revised to reflect the proposed rule revisions to 47 C.F.R. § 73.624(d) in section V.C.4. and Appendix A. Specifically, Question 5 on page 2 is revised as follows [bold used to show changes]:

- ☐ ~~technical (e.g., equipment delays)~~
- ☐ **legal reasons beyond station's control** (e.g., litigation, **international coordination**)
- ☐ **severe financial hardship** (e.g., ~~inability to finance~~ **bankruptcy, negative cash flow**)
- ☐ other reasons (e.g., natural disasters)

16. Instructions are revised to reflect the proposed rule revisions to 47 C.F.R. § 73.624(d) in section V.C.4. and Appendix A. Specifically, Item 5 is revised to by adding a new paragraphs and deleting the last paragraph as follows [bold used to show changes]:

Item 5: Reason for Delay in Construction. In the Fifth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998), the Commission announced its willingness to grant, on a case-by-case basis, an extension to the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. The Commission also stated that it would modify its existing policies regarding extensions, taking into account problems encountered that are unique to the DTV conversion.

In the Report and Order in MB Docket No. 07-91, __ FCC Rcd __ (2007), the Commission adopted a stricter standard for the grant of an extension of the applicable DTV construction deadline. See 47 C.F.R. § 73.624(d)(3).

First, stations may no longer obtain an extension because of technical reasons, such as equipment delays. Second, the Commission tightened the financial showing required for an extension. While previously requiring a showing that the cost of meeting the minimum build-out requirements exceeded the station's financial resources, the Commission now requires a showing that the station is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. In order to be considered for an extension due to financial hardship, a station must: (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. In addition, the station must submit a schedule that outlines the time period for the completion of construction. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.

The Commission will continue to consider extension requests where the station is facing legal obstacles, where resolution of the issue is truly beyond the control of the station. Such circumstances may include, for example, where a station is awaiting Commission action on an application for a DTV construction permit and action is delayed for reasons beyond the station's control (e.g., obtaining required governmental approvals such as FAA, Canadian and Mexican clearance) or where the Commission's action on the application is the subject of a court appeal.

In addition, the Commission will continue to consider other circumstances that are either unforeseeable or beyond the station's control. Such circumstances may include, for

example, acts of God, terrorism, and such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities that are unforeseeable events warranting additional time to construct.

In responding to this question, the applicant should attest to the nature of the problem(s) preventing the timely completion of construction and provide a detailed explanation of the reason(s) requiring an additional time to construct its station's DTV facilities.

~~Among the problems found in specific instances to warrant the granting of additional time to construct have been such technical obstacles as equipment delivery delays, unavailability of work or tower crews, and tower safety and other construction delays; and such legal obstacles as delays in obtaining required governmental (e.g., FAA, Canadian and Mexican) clearances, outstanding judicial litigation involving zoning, and the pendency of DTV channel change rulemakings and DTV construction permit applications. See Digital Television Construction Deadline, 16 FCC Red 8122 (2001). In addition, such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities would be unforeseeable events warranting additional time to construct. Finally, in Memorandum Opinion and Order on Reconsideration (MM Docket No. 00-39), FCC 01-330 (adopted November 8, 2001), the Commission recognized that some broadcasters, despite their reasonable, good faith efforts and the Commission's reduced build-out requirements, may be financially unable to timely complete the construction of their DTV facilities. The Commission will therefore consider, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements would create an undue financial hardship. In this regard, the applicant should provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. The applicant should also describe its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.~~

17. Form and Instructions are revised to make non-substantive changes necessary to update the form.

The Federal Communications Commission proposes to create a new FCC Form – “FCC Form 387: DTV Transition Status Report” – as set forth below:

18. The new Form will contain the following data elements [bold used]:

NOTE: This Form must be filed by all full-power broadcast television stations (licensees and permittees) on or before December 1, 2007. Consistent with Section 1.65 of the rules, 47 C.F.R. § 1.65(a), each Licensee/Permittee is responsible for the continuing accuracy and completeness of the information furnished in this Form. Whenever the information furnished in this Form is no longer substantially accurate and complete in all significant respects, the Licensee/Permittee shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of this Form so as to furnish such additional or corrected information as may be appropriate. For example, a significant change would include a change in a Licensee/Permittee's transition plans or status.

SECTION I – GENERAL INFORMATION

Item 1. Licensee/Permittee Information: Legal Name of the Licensee/Permittee; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code) E-Mail Address (if available).

Item 2. Contact Information (if different from licensee/permittee): Contact Representative; Firm or Company Name; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code) E-Mail Address (if available).

Item 3. Station/Facility Information: (a) FCC Registration Number; Call Sign; Facility ID Number; Community of License: City, State; Network Affiliation (if applicable); (b) Currently Assigned Channels: NTSC Channel; Post-Transition DTV Channel; Pre-Transition DTV Channel (if different from Post-Transition channel); (c) Relevant FCC File No. for Post-Transition Authorization, if on file with Commission (or indicate "Not Yet Filed"); (d) Post-Transition Construction Deadline: (i) February 17, 2009 if Pre-Transition DTV Channel is different from Post-Transition channel; (ii) Date 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91; (iii) February 17, 2009 if the station demonstrates that it faces a unique technical challenge (e.g., side-mounted antenna-related issue) preventing it from completing construction of its full, authorized post-transition facility; (iv) Expiration date of construction permit or pending application for an extension of time to construct a post-transition facility.

SECTION II – POST-TRANSITION FACILITY (Complete all items unless otherwise indicated.)

Item 1. Operational Status: Is the Licensee/Permittee now operating its fully authorized final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, Licensee/Permittee is finished with this Form; If NO, go to Item 2.)

Item 2. If Item 1 is NO (i.e., not fully operational), then indicate operational status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to begin full, authorized post-transition operations: (check one)

☐ (i). Licensee/Permittee is operating its post-transition facility pursuant to program test authority; see 47 C.F.R. § 73.1620(a). If checked, indicate date Licensee/Permittee expects to file its license to cover (FCC Form 302) application.

☐ (ii). Licensee/Permittee is operating its post-transition facility pursuant to special temporary authority (STA) or at a reduced facility. If checked, indicate power level and percentage of analog population covered by reduced facility.

☐ (iii). Licensee/Permittee is not operating its post-transition facility.

Item 3. Construction Status: Has the Licensee/Permittee completed construction of its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, skip Items 4-5 and go to Item 6(a); If NO, go to Item 4.)

Item 4. If Item 3 is NO (i.e., not fully constructed), then indicate construction status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to complete construction: (check all that apply)

☐ (i). Licensee/Permittee has not begun construction of its post-transition facility.

☐ (ii). Licensee/Permittee is now constructing its post-transition facility.

☐ (iii). Licensee/Permittee has constructed a reduced post-transition facility and additional construction is needed to complete Licensee/Permittee's fully authorized facility.

Item 5. Construction Permit Status: Does the Licensee/Permittee hold a license or construction permit for its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, then indicate relevant FCC File No. and go to Item 6(a); If NO, skip Item 6(a) and go to Item 6(b).)

Item 6(a). Does the Licensee/Permittee need to modify its license or construction permit in order to match the post-transition facilities defined for the Licensee/Permittee in the new DTV Table of Allotments, 47 C.F.R. § 73.622(i), as adopted in the Seventh Report and Order in MB Docket No. 87-268? ☐ Yes or ☐ No (If YES, go to 6(b); If NO, skip Item 6(b).)

Item 6(b). Has the Licensee/Permittee filed an application for a new or modified construction permit for its final, DTV (post-transition) facility? ☐ Yes or ☐ No (If YES, then indicate date filed and relevant FCC File No.; If NO, then indicate date Licensee/Permittee expects to file such application.) (NOTE: To qualify for expedited processing, the Licensee/Permittee must file its application within 45 days of the effective date of Section 73.616 of the rules adopted in the Third DTV Periodic Review proceeding, MB Docket No. 07-91, as well as meet other criteria described in that proceeding.)

SECTION III – NEXT STEPS (For Licensee/Permittees that are not fully constructed or operational.)

At present, Licensee/Permittee has the following needs that must be addressed before it can fully construct and operate its final, DTV (post-transition) facility: (check all that apply and for all checked responses, describe issue and estimated date of resolution.)

☐ (i). Licensee/Permittee needs to obtain FCC action on a pending application. (If checked, indicate date filed and relevant FCC File No.)

☐ (ii). Licensee/Permittee needs to obtain international government clearance for its post-transition facility.

☐ (iii). Licensee/Permittee needs to obtain FAA approval for its post-transition facility.

☐ (iv). Licensee/Permittee needs to obtain state or local governmental approval (e.g., zoning) for post-transition facility.

☐ (v). Licensee/Permittee needs to obtain, adjust and/or install equipment for its post-transition facility. (If checked, specify need below and indicate when equipment was ordered and expected delivery date.)

☐ (1). New antenna.

☐ (2). Adjust or install antenna (except for side-mount issue).

☐ (3). Switch side-mounted DTV antenna with top-mounted analog antenna.

☐ (4). New transmitter.

☐ (5). Adjust or install transmitter.

☐ (6). General installation of equipment requiring hiring of a tower crew.

☐ (7). Other equipment needs. (If checked, specify.)

☐ (vi). Licensee/Permittee needs to change its tower location or construct a new tower.

☐ (vii). Licensee/Permittee needs to coordinate its transition with other broadcast stations. (If checked, specify Call Signs of those other stations.)

☐ (viii). Licensee/Permittee has other needs that must be addressed before it can fully construct and operate its post-transition facility. (If checked, specify.)

SECTION IV –ANALOG SERVICE

Item 1. Status of Analog Service. (Check one.) Note: Full-power television broadcast stations must cease broadcasting in analog as of the transition date (i.e., February 17, 2009), as required by statute; see 47 U.S.C. § 309(j)(14).

☐ (i). Licensee/Permittee will continue to provide full, authorized analog service until the transition date.

☐ (ii). Licensee/Permittee has obtained FCC approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., date reduced service will begin, power level and percentage of population covered by Licensee/Permittee's analog service.

☐ (iii). Licensee/Permittee has obtained FCC approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and date service will cease.

☐ (iv). Licensee/Permittee has filed an application with the FCC requesting approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., proposed date reduced service would begin, proposed power level and percentage of population that would be covered by Licensee/Permittee's proposed reduced analog service.

☐ (v). Licensee/Permittee has filed an application with the FCC requesting approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and proposed date service will cease.

SECTION V – DTV TRANSITION PLAN (For Licensee/Permittees that are not fully constructed or operational.)

Licensee/Permittee must describe in detail its plans for ceasing analog broadcasting by the February 17, 2009 transition date and for completing construction of its post-transition facility by the deadline. For example, plan must include a detailed timeline of the Licensee/Permittee's plans to complete construction and any necessary testing of the Licensee/Permittee's full, authorized post-transition facility.

SECTION VI – Anti-Drug Abuse Act Certification and Licensee/Permittee's signature.

Note: this Form will be posted on www.fcc.gov and www.dtv.gov.

19. The Instructions to the new Form will explain the data elements noted above.

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for and Objectives of the Proposed Rules

2. This Notice begins the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television ("DTV"). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In 2005, Congress mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.

3. The purpose of this Notice, generally, is to (1) provide a progress report on the DTV transition; (2) describe the status and readiness of existing stations to complete the transition; (3) consider and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. In particular, the Notice proposes (1) rules for applying to construct final, DTV facilities and (2) construction deadlines for the completion of final, DTV facilities.

4. The primary objectives of this Notice is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) have completed construction and begun operating their final, DTV facilities. In addition, the Notice considers proposals to provide broadcasters with the regulatory flexibility necessary to meet these goals.⁴

B. Legal Basis

5. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

² See 5 U.S.C. § 603(a).

³ See *id.* § 603(a).

⁴ See discussion in Section D. of this IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

7. We believe that full-power television broadcast stations will be directly and primarily affected by the proposed rules, if adopted. Although the proposed rules will not apply to Class A TV stations, low power television (LPTV) stations, and TV translator stations, it is still possible that these entities may be affected by the proposed rules. For example, the proposed rules, if adopted, would permit applications for analog translators to be filed under specific circumstances and in that way may affect TV translator stations. Otherwise, we do not believe any other types of entities will be directly affected by the proposed rules; however, request comment on this tentative conclusion. A description of the small entities that may be directly affected, as well as an estimate of the number of such small entities, is provided below.

1. Entities Directly Affected By Proposed Rules

8. Television Broadcasting. The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.⁹ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹⁰ The Commission has estimated the number of licensed commercial television stations to be 1,376.¹¹

⁵ *Id.* § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁸ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

⁹ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁰ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹¹ See News Release, “Broadcast Station Totals as of December 31, 2006,” 2007 WL 221575 (dated Jan. 26, 2007) (“Broadcast Station Totals”); also available at <http://www.fcc.gov/mb/>.

According to Commission staff review of the BIA Financial Network, MAPro Television Database ("BIA") on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹² (or about 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹³ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁴ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

10. Class A TV, LPTV, and TV translator stations. The proposed rules and policies may also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.¹⁵ Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.¹⁶ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

2. Entities That May Be Indirectly Affected By Proposed Rules

11. Because the rules proposed in this Notice pertain to the transition from analog to digital broadcasting of full-power television broadcast stations, we do not believe the rules proposed will directly affect any other entities. We seek comment on this tentative conclusion. Certain entities may believe they would be affected by the proposed rules. For example, the proposed rules may, in the opinion of

¹² We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* IRFA note 11; however, we are using BIA's estimate for purposes of this revenue comparison.

¹³ See *Broadcast Station Totals*, *supra* IRFA note 11.

¹⁴ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹⁵ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁶ See *Broadcast Station Totals*, *supra* IRFA note 11.

cable operators, satellite carriers other multichannel video programming distributors ("MVPDs"), indirectly affect these entities. In addition, the proposed rules may indirectly affect electronics equipment manufacturers. Although such comment is not required by the RFA¹⁷, we invite comment from any small cable operators, small satellite carriers or other small MVPDs, as well as from small equipment manufacturers, who believe they might be directly affected by our proposed rules contained in the Notice.

12. Cable and Other Program Distribution. Cable system operators fall within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually.¹⁸ According to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more, but less than \$25 million.¹⁹ In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002.²⁰ The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

13. Cable System Operators (Rate Regulation Standard). The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.²¹ We last estimated that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.²² Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

14. Cable System Operators (Telecom Act Standard). The Communications Act also contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is

¹⁷ 5 U.S.C. § 603(a).

¹⁸ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁹ U.S. Census Bureau, 1997. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁰ See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). The preliminary data indicate that the number of total "establishments" increased from 4,185 to 6,118. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

²¹ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. For "regulatory simplicity," the Commission established the company size standard in terms of subscribers, rather than dollars; in the cable context, \$100 million in annual regulated revenues equates to approximately 400,000 subscribers. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Doc. Nos. 92-266 and 93-215, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7408-7409 ¶¶ 28-30 (1995).

²² Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.²³ The Commission has determined that there are 67.7 million subscribers in the United States.²⁴ Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²⁵ Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁶ and therefore is unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act.

15. **Direct Broadcast Satellite (“DBS”) Service.** DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution.²⁷ This definition provides that a small entity is one with \$13.5 million or less in annual receipts.²⁸ Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation.²⁹ All three currently offer subscription services. Two of these three DBS operators, DirecTV³⁰ and EchoStar Communications Corporation (“EchoStar”),³¹ report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. (“Dominion”), offers religious (Christian) programming and does not report its annual receipts.³² The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS

²³ 47 U.S.C. § 543(m)(2).

²⁴ See Public Notice, “FCC Announces New Subscriber Count for the Definition of Small Cable Operator,” 16 FCC Rcd 2225 (2001) (“2001 Subscriber Count PN”). In this Public Notice, the Commission established the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers, and determined that this threshold will remain in effect until the Commission issues a superceding Public Notice. We recognize that the number of cable subscribers was recently estimated by the Commission to be 65.4 million in June 2005; see *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2755, 2507 ¶ 10 (2006) (“2006 Cable Competition Report”). However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count PN, we propose to rely on the subscriber count threshold established by the 2001 Subscriber Count PN.

²⁵ 47 C.F.R. § 76.901(f).

²⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 U.S.C. § 573.

²⁷ 13 C.F.R. § 121.201. NAICS code 517510.

²⁸ *Id.*

²⁹ 2006 Cable Competition Report, 20 FCC Rcd 2538-38 ¶ 70.

³⁰ DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 14.67 million subscribers nationwide, as of June 2005; see 2006 Cable Competition Report, 20 FCC Rcd at 2540 ¶ 73.

³¹ EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the third largest MVPD, serving an estimated 11.45 million subscribers nationwide, as of June 2005. *Id.*

³² Dominion, which provides service under the brand name Sky Angel, serves fewer than one million subscribers. *Id.*

licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

16. Private Cable Operators ("PCOs"), also known as, Satellite Master Antenna Television ("SMATV") Systems. PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts.³³ Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs.³⁴ Individual PCOs often serve approximately 3,000-4,000 subscribers, but the larger operations serve as many as 15,000-55,000 subscribers. In total, PCOs currently serve approximately one million subscribers.³⁵ Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO qualify as small entities.

17. Home Satellite Dish ("HSD") Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually.³⁶ HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, as of June 2005, there were 206,358 households authorized to receive HSD service.³⁷ The Commission has no information regarding the annual revenue of the four C-Band distributors.

18. Wireless Cable Systems. Wireless cable systems use the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"),³⁸ and Educational Broadband Service

³³ 13 C.F.R. § 121.201, NAICS code 517510.

³⁴ See 2006 Cable Competition Report, 20 FCC Rcd 2564-65 ¶ 130.

³⁵ See *id.*

³⁶ 13 C.F.R. § 121.201, NAICS code 517510.

³⁷ See 2006 Cable Competition Report, 20 FCC Rcd 2544 ¶ 80.

³⁸ MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by Part 21 of the Commission's rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and (continued....)

("EBS"), formerly Instructional Television Fixed Service ("ITFS"),³⁹ frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers.⁴⁰ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.⁴¹ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. *Id.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁴² As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating \$13.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS.⁴³

19. Wireless Cable Systems (Commission Auction Standard). The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁴⁴ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁴⁵ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁶ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁴⁷ MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission's auction rules.

20. Educational institutions are included in this analysis as small entities; however, the

(Continued from previous page)

74 to Engage in Fixed Two-Way Transmissions: Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; 19 FCC Rcd 14165 (2004) ("*MDS/ITFS Order*").

³⁹ ITFS systems are regulated by Part 74 of the Commission's rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

⁴⁰ See *2006 Cable Competition Report*, 20 FCC Rcd 2565 ¶ 131.

⁴¹ *Id.*

⁴² See *Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997) ("*LMDS Order*").

⁴³ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁴ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

⁴⁵ 47 C.F.R. § 21.961(b)(1).

⁴⁶ See *ITFS Order*, 10 FCC Rcd at 9589.

⁴⁷ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

Commission has not defined a small business size standard for ITFS (now EBS).⁴⁸ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

21. In the 1998 and 1999 LMDS auctions,⁴⁹ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁵⁰ Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁵¹ These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.⁵² In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

22. Open Video Systems ("OVS"). In 1996, Congress established the open video system ("OVS") framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers ("LECs").⁵³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁵⁴ OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with \$13.5 million or less in annual receipts.⁵⁵ The Commission has certified 25 OVS operators with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.⁵⁶ As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.⁵⁷ Affiliates of Residential Communications Network, Inc. ("RCN"), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD.⁵⁸ RCN received approval to operate OVS systems in New York City, Boston,

⁴⁸ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

⁴⁹ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

⁵⁰ See *LMDS Order*, 12 FCC Rcd at 12545.

⁵¹ *Id.*

⁵² See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

⁵³ 47 U.S.C. § 571(a)(3)-(4). See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 88.

⁵⁴ See 47 U.S.C. § 573.

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517510.

⁵⁶ See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 88. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁵⁷ See *id.* at 2507 ¶ 14.

⁵⁸ See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 89. WideOpenWest is the second largest BSP and 16th largest MVPD, with cable systems serving about 292,000 subscribers as of June 2005. The third largest BSP is Knology, which currently serves approximately 170,800 subscribers as of June 2005. *Id.*